

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

**KATHLENN LAFERTA, and STEPHEN
LAFERTA,**

Plaintiffs,

v.

**KONE ELEVATOR, INTERNATIONAL
ELEVATOR, and JOHN DOE 1-100,**

Defendants.

Civil Action Number: 2:09-03285

OPINION

HON. WILLIAM J. MARTINI

OPINION

Before the Court is the report and recommendation of the Magistrate Judge below recommending granting Plaintiffs' motion to remand. The basis for the recommendation was a lack of diversity between the parties, that is, both Plaintiffs are New Jersey residents, and Defendant International Elevator is a New Jersey corporation with its principal place of business in New Jersey. *See* 28 U.S.C. § 1332; *Hertz Corp. v. Friend*, No. 08-1107, 130 S. Ct. 43 (2010).

Motions to remand to state court are dispositive motions. *In re United States Healthcare*, 159 F.3d 142, 146 (3d Cir. 1998). With respect to dispositive motions, such as Plaintiffs' motion to remand, the district court must make a *de novo* determination of those portions of the magistrate judge's report to which a litigant has filed an objection. *See* 28

U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); L. Civ. R. 72.1(c)(2).

However, where as here, no objections are made in regard to a report or parts thereof, the district court will adopt the report and accept the recommendation if it is “satisf[ied] ... that there is no clear error on the face of the record.” Fed. R. Civ. P. 72 Advisory Committee’s Notes (citation omitted); *see Peerless Ins. Co. v. Ambi-Rad, Ltd.*, Civil Action No. 07-5402, 2009 WL 790898, at *4 (D.N.J. March 23, 2009) (same); *see also Garcia v. I.N.S.*, 733 F. Supp. 1554, 1555 (M.D. Pa. 1990) (absent objections on a dispositive motion, a district court should review for “plain error” or “manifest injustice”); *cf. United Steelworkers of Am. v. N.J. Zinc Co.*, 828 F.2d 1001, 1006 (3d Cir. 1987) (explaining that “a party’s failure to object to a magistrate judge’s report and recommendation on a dispositive matter results in a loss of that party’s right to *de novo* review of specific proposed findings ... however, the better practice is for the district court to provide *some level of review* to dispositive legal issues raised by the report” (emphasis added)).

Having examined the report and recommendation and the filings of the parties, the Court is satisfied that the Magistrate Judge below applied the correct legal standard based on a factual record developed by the parties. *See, e.g.*, 28 U.S.C. §§ 1332, 1441 et seq. Notwithstanding Defendant Kone’s arguments to the contrary, International Elevator faces the potential for liability in this action. Joinder is not fraudulent, and the parties are not diverse. Thus remand is appropriate.

Having thoroughly reviewed Magistrate Judge Falk’s well-reasoned May 6, 2010

Report and Recommendation, as well as the parties' submissions, this Court is satisfied that there is no clear error on the face of the record to warrant denial of the Magistrate Judge's recommendation. The Report and Recommendation is adopted.

Plaintiffs' motion to remand is **GRANTED**.

An appropriate order accompanies this opinion.

DATE: May 26, 2010

s/ William J. Martini
William J. Martini, U.S.D.J.